IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 13, 2009 Session

GARY HARRIS v. ALCOA, INC., ET AL.

Appeal from the Chancery Court for Knox County
No. 168664-3 Michael W. Moyers, Chancellor

No. E2008-02166-COA-R3-CV - FILED MAY 27, 2009

The plaintiff, Gary Harris, was injured in a work-related accident. As a result of the accident, his right arm was amputated below the elbow. His employer, the defendant Alcoa, Inc., paid workers' compensation benefits to and for the plaintiff, including a payment of $33,776.83 to the co-defendant, Hanger Prosthetics & Orthotics, Inc., for a prosthetic arm known as a "myoelectric arm." Following a jury trial in federal court, the plaintiff entered into a confidential settlement of his claim against a third party which arose out of the accident. Thereafter, he filed a complaint, as amended, against the two defendants, averring that, out of the settlement proceeds, he had escrowed with his attorney the sum of $33,776.83. He claims that he did not receive the prosthetic arm for which Alcoa paid. He seeks a declaratory judgment that the escrowed funds rightfully belong to him and not his employer. Alcoa filed a motion for judgment on the pleadings. The trial court granted the motion. The plaintiff appeals. We vacate the trial court's judgment and remand for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

P. Alexander Vogel, Knoxville, Tennessee, for the appellant, Gary Harris.

James E. Wagner and Richard T. Scrugham, Jr., Knoxville, Tennessee, for the appellee, Alcoa, Inc.

Richard L. Hollow, Knoxville, Tennessee, for the appellee, Hanger Prosthetic & Orthotics, Inc.

OPINION

I

The complaint, liberally construed in favor of the plaintiff – as it must be in this judgment-on-the-pleadings case[1] – sets forth the core facts[2] as follows: (1) the plaintiff was injured in an on-the-job accident; (2) Alcoa was his employer; (3) as a result of the accident, the plaintiff's right arm was amputated below the elbow; (4) Alcoa paid Hanger $33,776.83 for a prosthesis known as a myoelectric arm; (5) Hanger did not furnish the paid-for prosthesis to the plaintiff; (6) the plaintiff entered into a confidential settlement with a third-party as to his claim against that entity arising out of the accident; and (7) out of the settlement, the plaintiff escrowed with his attorney the sum of $33,776.83.

In addition to the complaint for declaratory judgment and Alcoa's motion for judgment on the pleadings, the record contains Alcoa's cross claim against Hanger – a claim that was still pending when the trial court granted Alcoa judgment on the pleadings.

As a part of its judgment, the court below opined as follows:

> . . . my conception of [Tenn. Code Ann. § 50-6-112 (2008)] is that when the employer has paid out-of-cost medical expenses for which a third-party settlement has been reached, the employer is entitled to subrogation for those expenses regardless of whether or not these therapies have actually benefitted the employee. So, based on the allegation on the face of the complaint that that the employer, SRS originally, now Alcoa, paid for the manufacturing of the arm, the court will find that Alcoa is entitled to those moneys that represent its out-of-pocket costs. The employer – or the employee may well be entitled to go back to the employer for a provision of a replacement arm. But it does appear to me that the statute is fairly clear that once the employer has provided those services and paid those moneys out-of-pocket it's entitled to subrogation for that amount. So prepare an order granting the motion for judgment on the pleadings.

The court entered its judgment as final pursuant to the provisions of Tenn. R. Civ. P. 54.02. Plaintiff then appealed.

---

[1] *See* Tenn. R. Civ. P. 12.03; *see also* ***Stein v. Davidson Hotel Co.***, 945 S.W.2d 714, 716 (Tenn. 1997).

[2] We have embellished the allegations in the complaint somewhat to add some immaterial facts about which there is no dispute.

II.

While material outside the pleadings was filed in this case, the trial court expressly declined to consider anything other than the material found within the four corners of the pleadings. Hence, this is a pure Tenn. R. Civ. P. 12.03 case. It presents a question of law, reviewable by us *de nova* with no presumption of correctness attaching to the trial court's legal conclusions. ***Southern Constructors, Inc. v. Loudon County Bd. Of Educ***., 58 S.W.3d 706, 710 (Tenn. 2001).

III.

We are presented with an issue of first impression, one that involves the interplay between two code sections of the workers' compensation statutory scheme. The plaintiff leans heavily upon his interpretation of Tenn. Code Ann. § 50-6-204(a)(1) (2008). That statute provides, in relevant part, as follows:

> The employer or the employer's agent shall *furnish* free of charge to the employee . . . artificial members . . ., that [are] reasonably required; . . .

(Emphasis added.) Alcoa counters with Tenn. Code Ann. § 50-6-112(c)(1) (2008):

> In the event of a recovery against the third person [who is legally liable for the employee's injuries] by the worker, or by those to whom the worker's right of action survives, by judgment, settlement or otherwise, and the employer's maximum liability for workers' compensation under this chapter has been fully or partially paid and discharged, the employer shall have a subrogation lien against the recovery, and the employer may intervene in any action to protect and enforce the lien.

The question for us is simply this: Does an employer who has paid an entity for an "artificial member" that was never furnished to the employee have a "subrogation lien against the recovery" made by the employee against a third party who is legally responsible for the employee's injuries? Since this is a Tenn. R. Civ. P. 12 case, the sub-question is whether the plaintiff can prove any set of facts, under the allegations of the complaint, that would warrant a declaration that the plaintiff, and not Alcoa, is entitled to the escrowed funds of $33,776.83. *See* ***Stein v. Davidson Hotel Co***., 945 S.W.2d 714, 716 (Tenn. 1997).

IV.

The construction of a statute and the application of that interpretation to undisputed facts involve a question of law. ***Cape Fear Paging Co. v. Huddleston***, 937 S.W.2d 787, 788 (Tenn. 1996); ***Beare Co. v. Tennessee Dept. of Revenue***, 858 S.W.2d 906, 907 (Tenn. 1993).

It is axiomatic that the primary purpose of statutory construction is to ascertain and give effect to the legislative intention as expressed in the statute; we are cautioned not to unduly restrict or expand a statute's coverage beyond its intended scope. ***Roseman v. Roseman***, 890 S.W.2d 27, 29 (Tenn. 1994); ***Lyons v. Rasar***, 872 S.W.2d 895, 897 (Tenn. 1994). We determine legislative intent primarily from the natural and ordinary meaning of the language of the statute read in the context of the whole statute. ***James Cable Partners, L.P. v. City of Jamestown***, 818 S.W.2d 338, 341 (Tenn. Ct. App. 1991). Statutes *in para materia* are to be construed together and, if possible, the language of the statutes should be harmonized. ***Belle-Aire Village, Inc. v. Ghorley***, 574 S.W.2d 723, 725 (Tenn. 1978).

V.

The verb "furnish" in Tenn. Code Ann. § 50-6-204(a)(1), as used in that statute, is commonly defined as "to provide, or supply." *Webster's Universal College Dictionary*, p. 329 (1997 Edition). When Tenn. Code Ann. § 50-6-112(c)(1) is read in conjunction with Tenn. Code Ann. § 50-6-204(a)(1), it seems clear to us that the employer is statutorily vested with a "subrogation lien" because the "employer or the employee's agent" has "furnish[ed]," something specified in the statute, in this case, an "artificial member." The plaintiff alleges that he never received the myoelectric arm, *i.e.*, *that he was never "furnish[ed]*" the device. In our judgment, Alcoa is not entitled to judgment on the pleadings because there is a set of facts, *i.e.*, proof that the artificial member was never "furnish[ed]" to the plaintiff, that would entitle the plaintiff to a judgment on the allegations of the complaint. The plaintiff is entitled to a trial on the allegations of the complaint. With all of the parties before the court and with the complaint and the cross claim in play, the trial court is in a position to evaluate and weigh the evidence on these two clams and make a considered judgment based upon the evidence submitted by the parties.

VI.

The judgment of the trial court is vacated and this case is remanded to the court below for further proceedings. Costs on appeal are taxed to the appellee, Alcoa, Inc.

_____

CHARLES D. SUSANO, JR., JUDGE